

TEXAS LAWYER

An ALM Publication

texaslawyer.com | August 2017

THE LEGAL AND LITIGATION DEPARTMENTS OF THE YEAR

BAKER BOTTS

EVOLUTION OF ENERGY

WINNER: ENERGY

BY MARY ALICE ROBBINS

BAKER BOTTS HAS PLAYED A SIGNIFICANT ROLE IN THE evolution of the energy industry since the discovery of oil on Spindletop Hill in 1901 changed the Texas economy. The firm continues to be a major player in what today is a highly diversified industry.

Bill Kroger, a Houston partner and firmwide cochair of the energy practice group, said the firm represents companies involved in oil and gas exploration and production as well as those providing oil field services, electrical utilities and entities developing renewable energy sources.

"We have a comprehensive energy practice," Kroger said.

The firm's victories in 2016 ranged from securing a stay of the Environmental Protection Agency's regional haze rule for two states, including Texas, to the defeat of a novel causation and liability theory in the wrongful death of an unborn child after its mother allegedly was exposed to various chemicals while working at a refinery.

Houston partner Aaron Streett led a Baker Botts team representing three power companies in an appeal to the U.S. Court of Appeals for the Fifth Circuit challenging EPA's regional haze rulemaking for Texas and Oklahoma to restrict coal power plant emissions.

On July 15, 2016, the Fifth Circuit granted the state and industry petitioners' motion to stay the

rule pending resolution of the petitions for review on the merits and strongly suggested in its opinion that the rule is unlawful. The court also denied EPA's motion to transfer the case to the U.S. Court of Appeals for the District of Columbia, a court that Streett said is friendlier to government regulations than the Fifth Circuit. The ruling is the first published opinion by any court on that particular venue issue.

"That will be a very important precedent going forward," Streett said.

The EPA moved to remand the rule for review in December 2016, sparing the power companies an estimated \$2 billion in costs to comply with the rule.

In February 2016, a Baker Botts team led by Houston partner Ty Buthod won a summary judgment in a wrongful death suit brought by a former security guard at a Louisiana refinery. Seeking more than \$5 million, the plaintiff alleged in *Konrick v. ExxonMobil Corp.* that exposure to certain chemicals on the job caused the stillbirth of her child.

"If such a finding had been made, it could have been a real problem," Buthod said.

In *Daubert v. Merrell Dow Pharmaceuticals Inc.* motions, the Baker Botts team persuaded the U.S. District Court for the Eastern District of Louisiana that there was no scientific or medical basis for the allegations and the court agreed to strike the

THE FIRM CONTINUES TO BE A
MAJOR PLAYER IN WHAT TODAY IS
A HIGHLY
DIVERSIFIED
INDUSTRY.



Pictured from left are partners Ty Buthod, Bill Kroger, cochair of the firmwide energy litigation practice, Macey Reasoner Stokes and Aaron Streett.

of a gasoline station worker who died after developing acute myeloid leukemia. The widow alleged that her husband developed cancer due to the benzene in gasoline manufactured by the defendants.

In a May 23, 2016, order, the Fifth Circuit affirmed a decision by the U.S. District Court for the Eastern District of Louisiana to exclude the plaintiff's causation experts in *Burst v. Shell Oil Co.*, et al. and grant summary judgment for the defendants. The Fifth Circuit

plaintiff's three medical experts. Buthod said Baker Botts associates Louis Layrisson and Heather Hewitt wrote the *Daubert* motions.

On Oct. 20, 2016, the Fifth Circuit affirmed the district court's ruling in *Konrick*.

Another Baker Botts win at the Fifth Circuit in 2016 came in a negligence and products liability suit brought by the widow

of a gasoline station worker who died after developing acute myeloid leukemia. The widow alleged that her husband developed cancer due to the benzene in gasoline manufactured by the defendants.

In a May 23, 2016, order, the Fifth Circuit affirmed a decision by the U.S. District Court for the Eastern District of Louisiana to exclude the plaintiff's causation experts in *Burst v. Shell Oil Co.*, et al. and grant summary judgment for the defendants. The Fifth Circuit

held that the experts "left too great an analytical gap" between the underlying data showing that benzene can cause cancer and their conclusions that gasoline containing benzene also can cause cancer. The U.S. Supreme Court denied the plaintiff's petition for writ of certiorari in October 2016.

Macey Reasoner Stokes, an appellate partner in Baker Botts' Houston office, argued the case at the Fifth Circuit and said the case is important because the court did not allow the plaintiff to answer the question of whether benzene in gasoline can cause cancer with findings that pure benzene can cause cancer.

"It was important for the industry," Stokes said.

Blank Rome Houston partner Robert Scott, Stokes' co-counsel on the appeal, said, "She did a terrific job, a very organized, very thoughtful presentation. The result shows the panel agreed with the position we took." ■